

LETTER OPINION
98-L-192

November 10, 1998

Mr. Charlie Whitman
Bismarck City Attorney
PO Box 5503
Bismarck, ND 58506-5503

Dear Mr. Whitman:

Thank you for your letter asking for clarification of my August 25, 1998, opinion to State Auditor Robert R. Peterson concerning political subdivision authority to participate in an investment pool. You ask whether my office was aware of a "joint service network" agreement at the time that opinion was issued.

At the time of issuance of the above-noted opinion, this office was not aware of a "joint service network" agreement. You enclosed a copy of that agreement with your letter, along with the investment advisory agreement between the city of Bismarck and Norwest Bank North Dakota and a copy of a resolution of the board of commissioners of the city of Bismarck authorizing participation in a joint investment pool and signing of an agreement with Norwest Bank.

The "joint service network" agreement states it is authorized by the North Dakota Constitution and N.D.C.C. ch. 54-40. During the 1993 legislative session, N.D.C.C. § 54-40-08 was amended limiting the applicability of that section to joint agreements for the use of buildings and facilities. 1993 N.D. Sess. Laws ch. 401, § 50. The same bill created N.D.C.C. ch. 54-40.3 which contains the general authority for political subdivisions to engage in joint powers agreements. 1993 N.D. Sess. Laws ch. 401, § 49. I have previously determined that the circumstances surrounding the enactment of N.D.C.C. ch. 54-40.3 show a legislative intent to authorize joint powers agreements among political subdivisions even if only one of the participating entities possesses the statutory authority to perform the function about which the agreement relates. See 1994 N.D. Op. Att'y Gen. L-258 (Oct. 6 letter to Mattson).

Therefore, even if only one of the entities participating in the investment pool discussed in the above-noted letter to the State Auditor possessed the authority to invest in the manner contemplated therein (mutual fund investing), the other entities could participate with the entities in that joint investment pool. However, as noted in that opinion, the authority for that type of investing would need to be authorized by a home rule charter and by a specific

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implementing ordinance. I am not aware whether any of the participating entities has enacted the required authorizing charter and ordinance provisions.

Even if one of the participating entities enacts the appropriate charter and ordinance provisions authorizing mutual fund investment, the document you attach to your letter entitled "Agreement for the Joint Exercise of Governmental Powers to Establish a Joint Service Network" does not constitute a joint powers agreement to actually conduct an investment pool of the type apparently desired by the parties. The specific terms of that agreement disclose a desire of the parties to engage in an intergovernmental planning approach for the enhancement of the delivery of governmental services and that the agreement will permit the members to develop and implement a comprehensive plan for the delivery of those services. The "network" steering committee under the agreement is directed to "draft plans and make recommendations" that address numerous issues, including investments. However, it is not an agreement among the anticipated participants in which they actually agree to undertake joint investments. The documents provided only show a desire to plan and develop for the implementation of such other agreements. Individual political subdivisions have agreed with Norwest Bank for investment advisory services. To actually accomplish a joint powers agreement for a joint investment pool would require a document among all of the parties for that purpose.

Sincerely,

Heidi Heitkamp
Attorney General

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